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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

OLLEN G. COLBERT, Jr.,

Plaintiff,

VS.

**CINERGY, AND THE CINCINNATI GAS
AND ELECTRIC COMPANY, et al.,**

Defendants.

Case No.: 1:00-cv-00909

Judge Susan J. Dlott
Magistrate Judge Timothy Hogan

**PLAINTIFF'S REPLY TO DEFENDANT
CINERGY/THE CINCINNATI GAS AND
ELECTRIC COMPANY'S
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION TO EXTEND
TIME FOR DISCOVERY**

Comes now Plaintiff, Ollen G. Colbert, Jr., by and through Counsel, and respectfully replies to Defendants Cinergy/The Cincinnati Gas and Electric Company's Memorandum in Opposition to Plaintiff's Motion to Extend Discovery, as follows:

1. The Record of this case indicates that Plaintiff did not complained of lengthy and multiple extensions of time requested by Defendant Cinergy/The Cincinnati Gas and Electric Company when these extensions were needed by their Counsel. Specifically, the Record indicates extensions granted by Plaintiff, either without opposition or by Agreed Entry, between March 31, 2004 through June, 2004, due to some undefined difficulty that Defendant's Counsel was experiencing at that time in obtaining an Expert Witness Report. Plaintiff should be granted the same exception to extension-of time-requests as Defendant was granted.

2. Further, the discovery is needed whether or not a deposition of Mr. Bricking is taken. Defendants' Counsel indicates that she needs an extension of time for filing a dispositive motion such as a summary judgment motion. To respond to such motion, Plaintiff needs discovery and

will ask for it then, if he does not receive it at present. In the interest of justice, therefore, Plaintiff respectfully requests this most current extension of time be granted. Further, Plaintiff will not object to any extension of time required to consider Defendant Cinergy's Summary Judgment Motion well in advance of trial.

3. Counsel has been continuously burdened since June, 2004, with continuous litigation, almost all of which is pro bono. Counsel for Plaintiff is a sole practitioner, has one part time paralegal, and prepares all her own pleadings. Notwithstanding, the Motion for an Extension of Time was made prior to the previous deadline for discovery agreed to in September, 2004.

4. Ineffective assistance of counsel is a worthy argument on appeal in reversing the outcome of a trial where a party can show prejudice in pursuing his case due to lack of discovery, and certainly the delay of Plaintiff's Counsel in seeking discovery in this matter appears to be ineffective assistance. Notwithstanding Counsel's admission of such, Plaintiff deserves adequate discovery in the interest of justice, and the discovery items that Counsel has requested are critical to Plaintiff's case.

WHEREFORE, Plaintiff respectfully requests that the Court grant his Motion to Extend the discovery period until December 14, 2004 and to grant defendants whatever time they request for dispositive motions.

Dated this 20th day of November, 2004.

Respectfully submitted,

/s/ Rose Ann Fleming
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CERTIFICATE OF ELECTRONIC SERVICE

I HEREBY CERTIFY that November 21, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Ariane S. Johnson, Esq.
Attorney for Defendant Cinergy and The Cincinnati Gas and Electric Company
Cinergy Services Inc.
1000 East Main Street
Plainfield, IN 46168
and
Jerry A. Spicer, Esq.
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11 W. Monument Building
Suite 307
Dayton, OH 45402

and I HEREBY CERTIFY that I have mailed by United States Postal Service the document to the same parties.

/s/ Rose Ann Fleming
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